**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| **ILLINOIS POWER COMPANY** | ) | **01-0432** |
| **Proposed revisions to delivery services tariff** | ) | |
| **sheets and other sheets.** | ) | |
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# BRIEF ON EXCEPTIONS

# OF

# THE CITIZENS UTILITY BOARD AND

# THE PEOPLE OF THE STATE OF ILLINOIS


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**February 15, 2002**

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**BRIEF ON EXCEPTIONS OF THE CITIZENS UTILITY BOARD AND THE PEOPLE OF THE STATE OF ILLINOIS**

**NOW COME**, The Citizens Utility Board ("CUB") and the People of the State of Illinois, Illinois Attorney General's Office ("AG") (collectively, "Governmental and Consumer Intervenors," or "GCI"), by their attorneys, and file their Brief on Exceptions in the above-captioned proceeding.

## I. RATE BASE

This case was mandated to set residential delivery service tariffs to take effect on May 1, 2001. Illinois Power ("IP") selected a historical test year upon which these rates will be based. IP then proposed to reach beyond its chosen test year to increase rate base. The key issue is whether it is fair and consistent with test year principals to increase rate base as the PO allows.

The Proposed Order ("PO") adopted IP's inclusion of substantial plant additions that were placed in service after the test year. Within the test year, the level of rate base as of the end of the test year is balanced by other factors. These factors include reserves for depreciation and for accumulated deferred income tax ("ADIT") and billing determinants, which are also determined as of the end of the test year. The PO included all post-test year plant additions that were in service or received internal funding approval by September 30, 2001. These funding approved projects may go into service well after September 30, 2001. *See* Tr. at 553, line 16. In contrast, the PO only recognized reserves for depreciation and ADIT, which reduce rate base, through September 30, 2001. The PO does not recognize any growth in these reserves for the time between September 30, 2001 and when these funding approved projects in rate base finally go into service. This imbalance will be addressed in the following section on accumulated reserve for depreciation and ADIT.

The PO fails to recognize any growth of billing determinants, representing growth in customer sales, after the end of the 2000 test year. This allows IP's post-test year adjusted rate base to be divided by a smaller pool of electricity sales determined for the end of 2000, assuming normal growth. If billing determinants for the post-test year plant additions cut-off date were used, the number of customer sales would be higher, and consequently the rate per unit of electricity sales would be lower. GCI addresses this issue in the section on test year billing determinants/electricity sales.

## A. Accumulated Reserves for Depreciation and ADIT

### 1. The PO should not approve post-test year adjustments to rate base for plant additions that are not in service as of the cut off date.

The PO approves rate base adjustments to the historic 2000 test year that do not reflect the test year's balance. The historic 2000 test year includes those rate base assets that are in service as of December 31, 2000. It also includes depreciation, deferred taxes and billing determinants, which are determined as of December 31, 2000. By determining these countervailing factors by the same end date, the historic 2000 test year provides a balanced view upon which rates may be set.

The PO's post-test year rate base adjustments distort this balance. The PO includes post-test year adjustments for plant additions in service by September 30, 2001, and includes post-test year adjustments for the depreciation and deferred taxes reserves as of September 30, 2001. However, the PO allows further post-test year adjustments for post-September 30, 2001 plant additions that only received internal funding approval as of September 30, 2001. The Commission should reject these post-September 30, 2001 adjustments, because they distort the post-test year rate base factors that the Commission must fairly and consistently capture in setting delivery service rates.

The PO concludes that IP's post-September 30, 2001 adjustments are known and measurable. This conclusion is irrelevant to determining what level of countervailing rate base factors must be included in the adjustment in order to present a balanced adjustment to rate base. IP has already agreed that adjustments should be made for post-test year growth in depreciation and ADIT reserves related to the rate base adjustments. The PO, however, only recognized post-test year growth in depreciation and ADIT reserves through September 30, 2001. These adjustments and the adjustment for post-test year plant addition should be balanced. GCI proposed that the test year balance be restored by setting post-test year adjustments for accumulated reserves for depreciation and ADITs and in service plant additions by the same cut-off date.[1] The PO's decision to allow post-September 30, 2001 "funded" plant additions distorts this balance. Therefore, the Commission should limit IP's adjustment for post-test year plant additions to those assets in service as of the cut-off date.[2]

[1] GCI proposed using a June 30, 2001 cut-off date which is addressed in the Post-Test Year Plant Additions section below.

[2] The proposed language for this section is attached as Appendix A.

### 2. The PO misstates GCI's proposal to offset the inclusion of incomplete, but funded plant additions into rate base. [3]

GCI proposed in the alternative that the growth in accumulated reserves for depreciation and ADITs should be extended until the date that the last plant addition, with funding approval by September 30, 2001, is actually placed in service. GCI's alternative proposal does not run afoul of Staff's interpretation of what adjustments are known and measurable. Rather, it provides an adequate balance to the post-September 30, 2001 adjustments. The PO approves the inclusion in rate base of projected capital additions that will not be in service until after September 30, 2001. The PO should reflect the growth in the accumulated reserves for depreciation accumulated deferred taxes through the date that these plant additions go into service. This aligns these rate base factors with the way they are treated within the historic 2000 test year.

The PO finds that GCI's alternative suggestion "...overstates the appropriate adjustment" to rate base." PO at 21. This implies that the PO's approved rate base does require an "appropriate adjustment." In making this finding, the PO assumed that GCI's alternative proposal is to extend the reserves for depreciation and deferred income taxes through to June 30, 2002. The PO, however, misstates GCI's proposal to balance post-test year additions with post-test year accumulated reserves for depreciation and ADITs. GCI does not propose to recognize growth in the reserve for depreciation and the reserve for deferred income taxes through June 30, 2002, as stated in the PO. PO at 21. Rather, GCI only proposes, as an alternative to disallowing

[3] The following section and the accompanying replacement language attached as Appendix B is only offered as an alternative, where the Commission declines to adopt GCI's position that post-test year plant additions should be limited to those in service as of the cut-off date.

the post-cut off date adjustments, to recognize growth in these reserves to a point in time when all plant included in rate base actually goes into service. GCI Initial Brief at 12; GCI Reply Brief at 4. The actual GCI proposal properly matches plant additions to rate base with necessary adjustments to rate base. The PO should be revised to either remove the plant additions that are not in service as of the cut-off date, or to include the ADIT and depreciation rate base adjustments to plant that is not yet in service, yet is being allowed into rate base.[4]

**B. Test year billing determinants/electricity sales.**

The PO relies on Staff's argument that IP's proposed post-test year adjustments were known and measurable, pursuant to Section DST.160, to find that "...there is no substantive difference between using June 30, 2001 as a cut-off or September 30, 2001."[5] PO at 19, *see also* ICC Docket No. 98-0454 at 23. However, Section DST.160 only sets a limit on the amount of post-test year adjustments. *See* ICC Docket No. 98-0454 at 23. While the Commission may find Staff's argument is useful in determining the maximum amount of post-test year plant additions for which IP may be authorized to collect, this argument does not require the Commission to authorize that maximum level. Nor does Staff's argument preclude the Commission from considering other factors.

There are several factors which off-set growth in rate base during the test year. As addressed above, the PO does not adequately recognize growth in the reserves for depreciation

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[4]The alternative proposed language for this section is attached as Appendix B.

[5]GCI witness Effron calculated the difference between using June 30, 2001 as proposed by GCI and September 30, 2001 resulted in a reduction to delivery services rate base of approximately $113,214,000. *See* GCI Ex. 2.0, Schedules DJE - 6.1, DJE - 6.2, *see also* Appendix D.

and ADIT to off-set the post-test year adjustments for plant additions. In addition, the PO's "Commission's Conclusion" did not even address the issue of stale billing determinants being used to set rates. Where the plant additions cut-off date is extended, without a countervailing recognition of sales growth through that date, as is the case in this docket, these additions will improperly increase customer rates. *See* GCI Initial Brief at 8. However, the PO did not address how this issue could make a "...substantive difference between using June 30, 2001 as a cut-off or September 30, 2001." PO at 19.

The billing determinants used to generate the PO's approved rates are the result of same process employed by GCI Witness Effron to produce a normalized billing determinant amount for the end of 2000.[6] IP, however, claimed that this process somehow addressed Mr. Effron's concerns regarding the extended plant additions to rate base approved by the PO. IP Initial Brief at 10-11. A brief analysis of IP's proposed billing determinant shows that its method does not produce billing determinants for either June 30, 2001 or September 30, 2001. IP averaged the actual 2000 values and the forecasted 2001 values for the billing determinants. IP's method results in an average of the two full years' billing determinants and thereby approximates the level of billing determinants for the middle of that 24-month time period, i.e. the end of 2000, nine months earlier than the PO's cut-off date. Therefore, the rates approved by the PO are based on billing determinants for the end of 2000.

In order for IP to adjust billing determinants to balance its proposed plant additions through September 30, 2001, it would have to provide an accurate annualized level of billing

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[6] Mr. Effron "? used the average of the actual residential customers for 2000 and the forecasted residential customers for 2001 as a proxy for the normalized customers as of the end of 2000, for the purpose of calculating annualized billing determinants." GCI Reply Brief at 5.

determinants based on the number of customers on the cut off date. IP has not provided such a number. The end of 2000 billing determinant amount is the most current available in the record.

Mr. Effron acknowledged that the Commission may include post-test year additions to rate base. Therefore, in order to reconcile the end of 2000 billing determinant amount with the various post-test year additions to rate base proposed in this docket, Mr. Effron proposed a six-month cut-off date for post-test year plant additions. GCI Ex. 2.0 at 21, line 10. Mr. Effron's proposal minimizes the distortion of using different cut-off dates for billing determinants and plant additions by limiting plant in service beyond the test year to a maximum of six months. *See* GCI Ex. 2.0 at 33, line 12; GCI Initial Brief at 8.

IP's billing determinants offer nothing to support extending the plant addition cut-off date beyond six months, or to include into rate base projects that are merely approved as of the cut-off date. The PO's analysis states that "...there is no substantive difference between using June 30, 2001 as a cut-off or September 30, 2001." Given its distorting effect on customers' rates, the Commission's choice should be to decide in favor of the ratepayer and minimize this distortion by applying the more limited June 30, 2001 cut-off date.

Even if the Commission approves the June 30, 2001 cut-off date, the plant in rate base and the billing determinants proposed by IP are inconsistent. This inconsistency provides further reason to limit the recognition of plant additions to that plant in service as of the cut-off date. Therefore, the Commission should avoid further distortion of rates by limiting plant additions to rate base to those in service by June 30, 2001.[7]

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[7]The proposed language for this section is attached as Appendix C.

### C. Deferred Tax Debit Balances

The PO rejects GCI's position that IP improperly reduced the accumulated deferred income tax ("ADIT") debit balance, thereby unfairly increasing rate base. Its analysis is cursory and does not support its approval of IP's proposed deferred tax balance. Indeed, the PO's finding that the entire balance of the reserve for ADIT should be deducted from rate base "...without selective adjustment for individual items," when applied to record of evidence, is incompatible with the PO's total rate base finding. PO at 23. IP's proposed balance of the reserve for ADIT, which the PO appears to adopt, displays the selective adjustment that the PO explicitly rejects.

First, IP has the burden of proving all cost elements in this rate case are just and reasonable. 220 ILCS 5/9-201(c). IP cannot simply state that it has always done its accounting this way to met that burden. Second, the PO does not follow its own finding to deduct the entire balance of the reserve for ADIT from rate base. The ADIT balance approved by the PO does not include the deferred tax credit balance of $793.6 million related to the gain on the sale of its fossil fuel plants to Illinova. Exhibit GCI 4.0, page 7. Applying the PO's finding that the entire balance of the reserve for ADIT should be deducted from rate base would require the inclusion of this $793.6 million deferred tax credit balance related to the sale of its fossil fuel plants to Illinova in the ADIT deducted from rate base. Including this $793.6 million deferred tax credit balance would significantly reduce the Company's rate base from the level approved by the PO. Indeed, the inclusion of the entire balance of ADIT reserve would reduce IP's rate base by far more than GCI's proposal to eliminate certain deferred income tax debit balances.

While GCI did not propose to include the deferred tax credit balance of $793.6 million related to the gain on the sale of fossil fuel plants in the balance of accumulated deferred income taxes deducted from rate base, the existence of this deferred tax balance demonstrates the need to analyze the particular items of deferred taxes that should go into the calculation of rate base. The Commission cannot simply deduct the entire deferred tax reserve from rate base without considering the individual items that comprise the total deferred tax reserve. Indeed, the PO did not deduct the entire deferred tax reserve from rate base. Rather, the PO only eliminated those deferred tax credit balances that IP had removed. The PO cannot rely on IP's arguments that "...it has not been the Commission's practice to determine the components of the deferred tax reserve to be deducted from rate base on an account-by-account basis" when IP itself has removed a substantial component of the reserve. Therefore, for the reasons set out in Mr. Effron's testimony and the GCI Initial Brief, and because the ADIT balances related to accrued pensions and benefits, accruals for vacation pay, interest on tax issues and miscellaneous reserves were funded by ratepayers and IP should not earn a return on these funds, the Commission should them remove from rate base.[8]

## II. OPERATING REVENUES AND EXPENSES

### A. Amortization Rate of Intangible Plant

The PO rejects GCI's proposed adjustment of the amortization rate of intangible plant, citing three flawed reasons. First, the PO's conclusion states: "GCI's adjustment is essentially premised on the completion of amortization of IP's intangible plant balance at December 31, 2000, by mid-2003, and does not recognize that IP is and will be continuing to add intangible

[8]The proposed language for this section is attached as Appendix D.

plant. GCI's attempt to show that even with additions, the intangible plant balance will be fully amortized, is speculative." PO at 49 (emphasis added). The PO's finding is based on an incorrect description of GCI's position. In its conclusion the PO ignores the very arguments that it describes in its recitation of GCI's position. PO at 48-49.

GCI states in its Reply Brief: "IP is correct when it states that it is continuing to add intangible plant. However, the additions to intangible plant will not be enough to offset the balance of intangible plant on which amortization is becoming complete in the near future." Reply Brief at 11. GCI does not say that IP will reach a fully amortized level of intangible plant. Instead, GCI stated that "[i]f IP were 'expected to reach a fully amortized level of intangible plant in the foreseeable future', then an amortization expense of zero would be appropriate." Initial Brief at 19.

The balance of intangible plant as of the end of 1997 was $84,394,181. The atypically large amount of annual amortization resulting from this 1997 balance will be fully amortized by the end of 2002. Initial Brief at 19. The only balances left to be amortized will be plant additions from 1998 forward. The level of new plant additions to intangible plant allocated to distribution for 1998-2000 was $2.6, $0.5 and $1.9 million respectively, which resulted in an average rate of intangible plant additions below $2 million per year. GCI Ex. 5.0 at 1, *see also* PO at 48. Based on the remaining amortization of IP's 1997 additions and this substantially lower indicated level of future annual additions, GCI proposed to include $2,696,000 of pro forma amortization of intangible plant in the revenue requirement. GCI Ex. 4.0 at 15. This amount is reasonable given the level of net intangible plant in rate base as of the end of the test year and the relatively low level of post-test year additions to intangible plant included in rate base.

The PO is setting the level of amortization based substantially on IP's 1997 unusually large intangible plant expenses that will be fully amortized 7 months after the residential delivery service tariff goes into effect. Indeed, the net balance of intangible plant as of December 31, 2000 will be fully amortized by June 30, 2003. GCI Initial Brief at 18-19. Under the amortization adopted by the PO, after June 2003, IP will be collecting for a higher amortization expense than justified by current investment in intangible plant. *See* GCI Ex. 2.0 at 16. This $7,106,000 level of amortization is far above the amount of additions in 1998-2000. The lower level of future annual additions indicated by the record[9] demands a lower amortization expense. The amortization expense of $2,696,000, proposed by GCI will recover the remainder of IP's 1997-2000 intangible plant and will more accurately reflect the ongoing intangible plant investment than the $7,106,000 amortization expense, proposed by IP and implicitly adopted by the PO. *See* PO at 24, 48-49.

Second, the PO cites GCI's agreement that the amortization of intangible plant should be based on the useful lives of the assets as a reason to reject GCI's proposal to reduce the amortization expense for intangible plant. The fact that amortization is based on the useful lives of the assets is irrelevant to GCI's proposed reduction in amortization for intangible plant. GCI does not challenge that IP's amortization is based on the useful life of its assets. Rather, GCI uses the remaining amortization of the substantial and abnormal1997 additions to intangible plant as the basis for calculating a level of amortization that reflects the going forward amortization expenses that IP is expected to incur.

[9]IP has provided no evidence that the level of future annual additions will differ significantly from those in 1998-2000.

Additionally, the PO agrees with both the Commission Staff and IP that amortization expense should not be determined based on the expected timing of future rate cases. PO at 49. However, GCI has made no such argument, and the PO does not explain how Staff's and IP's argument is relevant to GCI's proposed reductions. Here again, amortization expense should be based on the level of amortization expense on a going forward basis. The record has set out that a significant portion of the approved annual amortization expense of $7,106,000 will not exist after the end of 2002. *See* GCI Initial Brief at 19. While IP will continue to make annual plant additions, IP has not provided any future expense estimate to support a continued collection at this elevated rate. It is inappropriate for the PO to set rates based on a level of amortization expense that is certain not to occur during even the first year of the tariff.

Third, the PO reasons that

> it would be inappropriate to adopt [GCI's] single adjustment [to the amortization expense for intangible plant] based on the fact that a revenue requirement component **may** cease to exist in 2003, prior to the next DST case without also making adjustments for other cost changes that **may** occur between the date the rates set in this case go into effect and the likely date of the next DST rate order.

PO at 49 (emphasis added). This statement completely disregards (1) that GCI's adjustment does recognize and accommodate cost changes that are expected to occur in the future and (2) the fact that the 1997 intangible plant costs, which comprise a major portion of the $7,106,000 annual amortization expense in 2000, **will** be fully amortized by the end of 2002. *See* GCI Initial Brief at 19. The Commission cannot ignore this uncontested accounting fact. The possible adjustments that the PO cites to support its position are neither identified, nor do they rise to the level of certainty of the cessation of the amortization of the 1997 intangible plant costs. *See* PO at 49. Thus, the PO ignores an uncontested fact, because it speculates that other facts may be revealed in the future. The amortization of intangible plant will be less even in the first year of new rates than the pro forma amortization expense included in the revenue requirement by IP. The Commission cannot ignore this fact.[10]

### B. Injuries and Damages Expenses

GCI stated its concern that if the commission chooses to phase in the $5.5 million liability accrual over three years, then in the future, there should be a rate base deduction for the accrued liability in excess of claims actually paid. Such a rate base deduction is appropriate because the accrued liability would represent the cumulative recovery through rates in excess of amounts actually paid out. Despite the fact that the PO acknowledged GCI's concern, it neglected to include this proviso in its conclusion regarding this issue. PO at 51. This issue is uncontested. Therefore, if the commission approves this accrual for injuries and damages expense, it should include a provision for a rate base deduction for injuries and damages accrued but not paid.[11]

## III. COST OF SERVICE STUDY ("COSS")

### A. The Commission Should Adopt GCI's Equitable Approach To The Allocation Of Miscellaneous Revenues To Customer Classes

The PO distorts the totality of GCI's argument regarding the allocation of miscellaneous revenues. The PO erroneously implies that GCI only spoke to the allocation of equipment rental revenue. To clarify, GCI Witness Smith explains GCI's position regarding the allocation of miscellaneous revenue in her Rebuttal Testimony:

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[10] The proposed language for this section is attached as Appendix E.

[11] The proposed language for this section is attached as Appendix F.

> "[i]t is common practice to allocate costs to customer classes, then to set the class revenue requirements equal to the allocated costs. However, we do not have specific rate classes for the services that give rise to miscellaneous revenues. If we are trying to create rates that reflect cost causation, the most "Miscellaneous Revenues" should be allocated according to the costs that are incurred in order to produce the revenues."

GCI Ex. 3 at 2. Though GCI used equipment rental as a specific example, (GCI Initial Brief at 23; GCI Reply Brief at 13), GCI Witness Smith's Direct and Rebuttal Testimony clearly demonstrate GCI's methodology of allocating all miscellaneous revenue. GCI Ex. 1 at GCI Ex. 3 at 2-3.

There may have been confusion because there is a heading for "Miscellaneous Revenues" that includes various categories, and one of the categories is also called miscellaneous revenues. GCI allocated different categories of miscellaneous revenue according to different methods, so that they were allocated in the same manner that the Company's COSS model allocated the underlying costs supporting that revenue. The Company should have been aware of this distinction and of how GCI allocated the categories, because they received the full cost of service study performed by GCI.

For example, GCI's approach with regard to forfeited discounts considers that "forfeited discounts reflect customers not paying bills on time, and it is appropriate that they be credited to customers in proportion to how they were booked." In other words, GCI did not use a method different from the company for this category. GCI Ex. 3 at 3. In another example that referred to the various activities under the Miscellaneous revenues category, "if revenue is produced by one activity of meter readers, the revenue should be allocated in the same manner that the meter readers expense is allocated." GCI Ex. 1 at 9. In this way, GCI's approach retains consistency between the allocation of all miscellaneous revenues and their underlying expenses. The

Company did not dispute why this <u>category</u>, which reflects primarily revenues produced by distribution personnel, should not be allocated on the basis of the labor allocator, as recommended by GCI.

The PO fails to give proper consideration to the thrust of GCI's position – that all miscellaneous service revenues should be allocated on the basis of the expense that creates the revenue. GCI specifically disputed IP's allocation of equipment and property rental revenue, which represents only one category of miscellaneous revenues. IP allocated this revenue according to the classes that paid the rental fees, instead of according to the classes that were allocated the underlying equipment expenses. GCI Initial Brief at 23; GCI Reply Brief at 13. GCI submits that the Company's COSS model did not demonstrate the appropriate allocated rented plant items to the rental customers, and should therefore be rejected.

The Commission should not adopt the Company's rate design proposal, as it would produce an inequitable and inconsistent result. GCI recognizes the inconsistency produced by IP's rate design and therefore adjusted the Company's COSS to reflect an allocation of miscellaneous revenue on the same basis as the Distribution Operating Labor expense. The Commission should therefore adopt the method used in GCI's rebuttal testimony and exhibits that corrects IP's inequitable allocation of miscellaneous revenue.[12]

## IV. Use of Electronic Signatures for Customers - RES Letters of Agency

The PO appears to have determined that a Section 2EE Letter of Agency ("LOA") may be authorized by an electronic signature. 815 ILCS 505/2EE. However, the PO provides absolutely no analysis regarding whether an LOA may be authorized via electronic signature under the controlling law, or which of the federal or state laws apply to this issue. The PO's determination that "...the Commission agrees with the position of the Parties and shall allow this issue to be resolved through the workshop process with the understanding that the parties should arrive at a process to implement electronic signatures" appears to find that an LOA may be authorized by an electronic signature, with only the implementation left to be determined. As the Commission appears to have determined that an LOA may be electronically signed, the Commission's order must provide an adequate legal analysis to support this conclusion. *See* 220 ILCS 5/10-201(e)(iii). Therefore, the PO should provide adequate legal analysis regarding whether an electronic signature meets the requirements of Section 2EE. 815 ILCS 505/2EE.

**A. Requirements of Section 2EE**

Section 2EE Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 et seq. (hereinafter "Fraud Act")) requires an electric services provider ("ESP") to secure a signed and dated letter of agency ("LOA") from a customer before it can submit or execute a change in the customer's electricity service. Standing alone, Section 2EE appears to require a physical or "wet" signature. 815 ILCS 505/2EE(2). However, both the Illinois Electronic Commerce and Security Act ("ECSA") (5 ILCS 175/1 et seq.) and the federal Electronic Signatures in Global and National Commerce Act of 2000 ("ESGNCA" or "E-Sign Act") (15 USCS § 7001 et seq.) allow, with a few exceptions, a secure electronic signature to validate a document that otherwise requires a "wet" signature.

The ECSA states: "where a rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law." 5 ILCS 175/5-120(a). Section 2EE requirement that an LOA must be signed and dated by the

[12] The proposed language for this section is attached as Appendix G.

subscriber requesting the electric service provider change will be met by an electronic signature under ECSA.

The E-Sign Act provides that "a signature, contract, or other record, may not be denied legal effect, validity, or enforceability solely because it is in electronic form,...[or] because an electronic signature or electronic record was used in its formation." 15 USCS § 7001(a). Therefore, for the same reasons that ECSA meets the requirements of Section 2EE, E-Sign allows electronic signatures in this context.

**B. Implementation of an Electronically Signed LOA.**

While GCI believes that either Act authorizes an electronic signature of a Section 2EE LOA, there are other considerations. Both ECSA and the E-Sign Act provide for verification of an electronic signature, such that the procedure used ensures that only the party, to which the electronic signature is attributed, could have executed the electronic signature. *See* 5 ILCS 175/5-120; 5 ILCS 175/10-110; 15 USCS § 7001(c). The GCI is intensely concerned with how the electronic signature will be implemented and the manner in which the electronic signature will be verified. As with telemarketing, internet marketing is rife with opportunities for fraud. Electricity is a vital service upon which individuals and businesses depend. As such, the Commission should mandate that the workshops use the procedures set out in these acts as a template to generate rules regarding the methods and verification requirements of electronic signatures to be presented to the Commission for adoption.[13]

[13]The proposed language for this section is attached as Appendix H.

## CONCLUSION

For the foregoing reasons, GCI respectfully request that the Proposed Order be revised to reflect GCI's recommendations.

Dated: February 15, 2002

This Brief on Exceptions in the ICC Docket NO. 01-0432 is being filed on behalf of:

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